

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR ESB 8**

**Citations Affected:** IC 34-6-2-44.7; IC 34-57-5.

**Synopsis:** Arbitration in family law. Specifies the procedures for family law arbitration cases. (This conference committee report adds provisions: (1) specifying that a family law arbitrator includes a registered domestic relations mediator; and (2) specifying that family law arbitration only applies to an action if either both parties are represented by an attorney or both parties are pro se. This conference committee report removes provisions: (1) creating a family arbitration pilot program in one county selected by the supreme court; and (2) specifying that a family law arbitrator includes an attorney licensed to practice law in Indiana who is agreed upon by both parties in a family law arbitration.)

**Effective:** July 1, 2005.

# CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 8 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 34-6-2-44.7 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]: **Sec. 44.7. "Family law arbitrator", for purposes of**
- 5 **IC 34-57-5, means:**
- 6 (1) **an attorney certified as a family law specialist in Indiana by**
- 7 **an independent certifying organization that is approved and**
- 8 **monitored under Rule 30 of the Rules for Admission to the**
- 9 **Bar;**
- 10 (2) **a private judge qualified under Rule 1.3 of the Indiana**
- 11 **Supreme Court Rules for Alternative Dispute Resolution;**
- 12 (3) **an individual who is a former magistrate or commissioner**
- 13 **of an Indiana court of record; or**
- 14 (4) **an attorney who is a registered domestic relations mediator**
- 15 **under Rule 2.5(B) of the Indiana Supreme Court Rules for**
- 16 **Alternative Dispute Resolution.**
- 17 SECTION 2. IC 34-57-5 IS ADDED TO THE INDIANA CODE AS
- 18 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 19 1, 2005]:
- 20 **Chapter 5. Family Law Arbitration**
- 21 **Sec. 1. (a) This chapter is applicable only to the family law**
- 22 **matters described in section 2 of this chapter and does not apply to**

any other type of arbitration. An appellate court opinion interpreting or construing this chapter has precedential value only for family law arbitrations and does not apply to any other type of arbitration.

(b) This chapter is applicable only to an action in which each party is:

- (1) represented by an attorney; or
- (2) pro se.

This chapter does not apply if one (1) party is represented by an attorney and the other party is pro se.

Sec. 2. (a) In an action:

- (1) for the dissolution of a marriage;
- (2) to establish:
  - (A) child support;
  - (B) custody; or
  - (C) parenting time; or
- (3) to modify:
  - (A) a decree;
  - (B) a judgment; or
  - (C) an order;

entered under IC 31;

both parties may agree in writing to submit to arbitration by a family law arbitrator.

(b) If the parties file an agreement with a court to submit to arbitration, the parties shall:

- (1) identify an individual to serve as a family law arbitrator; or
- (2) indicate to the court that they have not selected a family law arbitrator.

(c) Each court shall maintain a list of attorneys who are:

- (1) qualified; and
- (2) willing to be appointed by the court;

to serve as family law arbitrators.

(d) If the parties indicate that they have not selected a family law arbitrator under subsection (b)(2), the court shall designate three (3) attorneys from the court's list of attorneys under subsection (c). The party initiating the action shall strike one (1) attorney, the other party shall strike one (1) attorney, and the remaining attorney is the family law arbitrator for the parties.

(e) In a dissolution of marriage case, the written agreement to submit to arbitration must state that both parties confer jurisdiction on the family law arbitrator to dissolve the marriage and to determine:

- (1) child support, if there is a child of both parties to the marriage;
- (2) custody, if there is a child of both parties to the marriage;
- (3) parenting time, if there is a child of both parties to the marriage; or
- (4) any other matter over which a trial court would have jurisdiction concerning family law.

Sec. 3. Unless both parties agree in writing to repudiate the agreement, an agreement to submit to arbitration by a family law

1 arbitrator under this chapter is:

- 2 (1) valid;
- 3 (2) irrevocable; and
- 4 (3) enforceable;

5 until the judgment is entered in the matter in which arbitration has  
6 taken place.

7 Sec. 4. For arbitration to take place under this chapter, at least  
8 one (1) of the parties must have been:

- 9 (1) a resident of Indiana; or
- 10 (2) stationed at a United States military installation in Indiana;
- 11 for at least six (6) months immediately preceding the filing of the
- 12 petition or cause of action.

13 Sec. 5. (a) A family law arbitrator shall comply with the:

- 14 (1) child support; and
- 15 (2) parenting time;
- 16 guidelines adopted by the Indiana supreme court in family law
- 17 arbitration if there is a child of both parties to the marriage.

18 (b) Before assuming the duties of a family law arbitrator, a  
19 family law arbitrator must take an oath to:

- 20 (1) faithfully perform the duties of the family law arbitrator;
- 21 and
- 22 (2) support and defend to the best of the family law arbitrator's
- 23 ability the constitution and laws of Indiana and the United
- 24 States.

25 (c) The family law arbitrator shall sign a written copy of the oath  
26 described in subsection (b) and submit the signed copy to the court.

27 Sec. 6. (a) A record of the proceeding in family law arbitration  
28 may be requested by either party if written notice is given to the  
29 family law arbitrator not more than fifteen (15) days after the  
30 family law arbitrator has been selected.

31 (b) Written notice under subsection (a) must specify the  
32 requested manner of recording and preserving the transcript.

33 (c) The family law arbitrator may select a person to record any  
34 proceedings and to administer oaths.

35 Sec. 7. (a) Except as provided in subsection (b), the family law  
36 arbitrator shall make written findings of fact and conclusions of  
37 law not later than thirty (30) days after the hearing.

38 (b) If both parties consent, the period for the family law  
39 arbitrator to make written findings of fact and conclusions of law  
40 may be extended to ninety (90) days after the hearing.

41 (c) The family law arbitrator shall send a copy of the written  
42 findings of fact and conclusions of law to:

- 43 (1) all parties participating in the arbitration; and
- 44 (2) the court.

45 (d) After the court has received a copy of the findings of fact and  
46 conclusions of law, the court shall enter:

- 47 (1) judgment; and
- 48 (2) an order for an entry on the docket regarding the judgment.

49 Sec. 8. (a) In a dissolution of marriage case, the family law  
50 arbitrator shall:

- 51 (1) divide the property of the parties, regardless of whether the

property was:

(A) owned by either party before the marriage;

(B) acquired by either party in his or her own right:

(i) after the marriage; and

(ii) before final separation of the parties; or

(C) acquired by their joint efforts; and

(2) divide the property in a just and reasonable manner by:

(A) division of the property in kind;

(B) setting the property or parts of the property over to one

(1) of the parties and requiring either party to pay an amount, either in gross or in installments, that is just and proper;

(C) ordering the sale of the property under the conditions the family law arbitrator prescribes and dividing the proceeds of the sale; or

(D) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

(b) The division of marital property under this section must comply with IC 31-15-7-5.

**Sec. 9.** In a dissolution of marriage case, at least sixty (60) days after the petition or cause of action is filed, the family law arbitrator may enter a summary dissolution decree without holding a hearing if verified pleadings have been filed with the family law arbitrator, signed by both parties, containing:

(1) a written waiver of hearing; and

(2) either:

(A) a statement that there are no contested issues in the action; or

(B) a written agreement made in accordance with IC 31-15-2-7 that settles any contested issues between the parties.

**Sec. 10.** A family law arbitrator may modify an award after making written findings of fact and conclusions of law if:

(1) a party makes a fraudulent misrepresentation during the arbitration;

(2) the family law arbitrator is ordered to modify the award on remand; or

(3) both parties consent to the modification.

**Sec. 11.** An appeal may be taken after the entry of judgment under section 7(d) of this chapter as may be taken after a judgment in a civil action.

**Sec. 12.** (a) Except as provided in subsection (b), fees for the family law arbitrator shall be shared equally by both parties unless otherwise agreed in writing.

(b) The family law arbitrator may order a party to pay:

(1) a reasonable amount for the cost to the other party of:

(A) maintaining; or

(B) defending;

1           **any proceeding under this chapter; and**

2           **(2) attorney's fees, including:**

3               **(A) amounts for legal services provided; and**

4               **(B) costs incurred:**

5                   **(i) before the commencement of the proceedings; or**

6                   **(ii) after entry of judgment.**

7           **(c) Fees for the family law arbitrator shall be paid not later than**  
8           **thirty (30) days after the court enters judgment.**

9           **Sec. 13. The Indiana Supreme Court Rules for Alternative**  
10          **Dispute Resolution apply to family law arbitration in all matters**  
11          **not covered by this chapter.**

          (Reference is to ESB 8 as reprinted April 8, 2005.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 8**

**S**igned by:

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Senator Ford  
Chairperson

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Representative Duncan

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Senator Broden

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Representative Van Haaften

**Senate Conferees**

**House Conferees**